HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, April 02, 2019
86th Legislature, Number 37
The House convenes at 10 a.m.

Three bills are on the Major State Calendar and five bills are on the General State Calendar for second reading consideration today. The table of contents appears on the following page.

Dwayne Bohac
Chairman
86(R) - 37

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Tuesday, April 02, 2019
86th Legislature, Number 37

SUBJECT: Changing Sunset dates for various state agencies

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 11 ayes — Phelan, Deshotel, Harless, Holland, Hunter, P. King, Parker, Raymond, E. Rodriguez, Smithee, Springer

0 nays

2 absent — Hernandez, Guerra

WITNESSES: For — None

Against — Arif Panju, Institute for Justice; (*Registered, but did not testify*: Vance Ginn, Texas Public Policy Foundation)

On — (*Registered, but did not testify*: Jennifer Jones, Texas Sunset Advisory Commission)

BACKGROUND: Government Code ch. 325, the Texas Sunset Act, requires the Sunset Advisory Commission and the Legislature to evaluate certain state agencies periodically to determine whether a public need exists for their continuation or their functions. A state agency is subject to the act if a date is set in statute for it to be reviewed or abolished.

DIGEST: HB 1550 would change the following agencies' statutory Sunset dates from September 1, 2019, to September 1, 2021:

- Texas Alcoholic Beverage Commission;
- Finance Commission;
- Office of Banking Commissioner;
- Office of Savings and Mortgage Lending Commissioner and Department of Savings and Mortgage Lending;
- Office of Consumer Credit Commissioner;
- Department of Public Safety;
- Texas Veterans Commission;
- Texas Military Department;

- Texas State Library and Archives Commission;
- Texas Historical Commission;
- State Office of Risk Management and the risk management board;
- School Land Board;
- Texas Medical Board;
- Texas State Board of Examiners of Psychologists;
- Texas State Board of Examiners of Marriage and Family Therapists;
- Texas State Board of Examiners of Professional Counselors;
- Texas State Board of Social Worker Examiners;
- Texas Funeral Service Commission;
- Texas State Board of Public Accountancy;
- Texas Board of Professional Geoscientists;
- Texas Board of Professional Land Surveying;
- Texas Real Estate Commission;
- Texas Appraiser Licensing and Certification Board;
- Texas State Board of Plumbing Examiners;
- Texas Department of Motor Vehicles; and
- State Securities Board.

The bill also would move from 2019 to 2021 the next review for the following agencies subject to review but not to being abolished under the Texas Sunset Act:

- Texas Windstorm Insurance Association;
- Veterans' Land Board;
- Lower Colorado River Authority;
- Guadalupe-Blanco River Authority;
- Nueces River Authority; and
- Red River Authority of Texas.

If a conflict existed between this bill and another bill of this regular legislative session that extended the Sunset date of a governmental entity, the provisions of the other bill would prevail.

The bill would take immediate effect if finally passed by a two-thirds

record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUPPORTERS SAY:

HB 1550 would change the Sunset date from September 1, 2019, to September 1, 2021, for all 32 agencies that went through the Sunset review process during the interim, which could be used later in the session as a vehicle to avoid inadvertently terminating those agencies if individual bills for their continuation failed to be enacted for other reasons. Any provision of the bill would be overridden if subsequent Sunset legislation was enacted for a particular agency, ensuring that the Legislature retained its authority to decide whether an individual agency should be continued or abolished.

OPPONENTS SAY:

The occupational licensing agencies included in HB 1550 were reviewed during the interim by the Sunset Advisory Commission and should be evaluated upon their merits individually by the Legislature during this session instead of unnecessarily extending their Sunset dates without consideration. This is especially true of some occupational licensing agencies that the commission recommended be abolished.

SUBJECT: Continuing the Office of Consumer Credit Commissioner

COMMITTEE: Pensions, Investments, and Financial Services — committee substitute recommended

VOTE: 10 ayes — Murphy, Vo, Capriglione, Flynn, Gervin-Hawkins, Gutierrez, Lambert, Leach, Longoria, Stephenson

0 nays

1 absent — Wu

WITNESSES: For — Deborah Polan, Texas Consumer Credit Coalition (*Registered, but did not testify*: Rob Norcross, Consumer Service Alliance of Texas; Michael Johnson, Cottonwood Financial; Alex Vaughn, Enova International Inc.; Stephen Scurlock, Independent Bankers Association of Texas; Bradford Shields, Security Finance; Robert Howden, Texas Consumer Finance Association; Mario A. Martinez, Texas Consumer Lenders; John Fleming, Texas Mortgage Bankers Association)

Against — Shirley Gonzales, Bill's Pawn; Andrea Farr, Texas Association of Pawnbrokers (*Registered, but did not testify*: Bradley Blaylock, Bernadete Lingo, and Scott Simpsom, Best Little Pawn Shop; Joel Hefley, Devine Pawn and Gun; Jackie Bonds, McKinney Jewelry & Loan; James Gonzales, Mark Ratliff, Money Mart Pawn; Sean Makovsky, Money Mart Pawn and Jewelry; Amber Bates, Pawn Tech, Inc.; Fred Bogar, Quik Pawn; Keri Fouse, Cathy Gish, David Springett, Roberta Suarez, Patrick Wade, Pat Vosburg, and Joy Vosburg, Texas Association of Pawnbrokers)

On — Leslie Pettijohn, Office of Consumer Credit Commissioner; Carissa Nash, Sunset Advisory Commission; Larry Temple (*Registered, but did not testify*: Matthew Nance and Michael Rigby, Office of Consumer Credit Commissioner)

BACKGROUND: The Office of Consumer Credit Commissioner (OCCC) regulates financial services other than banks and educates consumers and creditors to foster a fair, lawful, and healthy credit environment.

Functions. OCCC regulates, licenses, and registers consumer credit providers, including motor vehicle finance providers, pawnshops, credit access businesses, and lenders that charge in excess of 10 percent interest.

Complaints and enforcement. OCCC examines licensees for compliance with state and federal laws and is responsible for investigating and resolving complaints against licensees and ordering consumer restitution or taking other disciplinary action. In fiscal 2017, OCCC performed 4,820 risk-based examinations of its licensees. It received 2,130 complaints and took enforcement action in 48 cases. The majority of complaints related to motor vehicle sales finance providers, while the rest related mostly to credit access businesses, regulated lenders, and pawn shops.

The agency took a total of 389 enforcement actions in response to complaints or findings during examinations. The agency issued 229 cease and desist orders and 147 administrative penalties, mostly against motor vehicle sales finance providers and credit access businesses. Finance Code sec. 14.251(b) authorizes OCCC to order entities to pay restitution to consumers when entities overcharge for fees or services. In 2017, OCCC ordered or directed licensees and registrants to pay consumers about $21.8 million.

OCCC also administers the Texas Financial Education Endowment grant program to improve consumer credit, financial education, and asset building opportunities. The program is funded by an annual fee of up to $200 on each credit access business.

Staffing. At the end of fiscal 2017, OCCC employed 83 staff. About 48 of the staff travel throughout the state examining motor vehicle sales finance providers, regulated lenders, credit access businesses, and other regulated entities.

Funding. OCCC is a self-directed, semi-independent agency. As such, it does not receive a legislative appropriation and funds itself through fees on the regulated industries. In fiscal 2017, OCCC collected $9.7 million in revenue for agency operations, mainly from licensing and registration fees, and spent about $9 million on operations. OCCC maintained a fund

balance of $12.4 million at the end of fiscal 2017.

Abolishment. OCCC last underwent Sunset review during the 2000-2001 review cycle by the 77th Legislature. OCCC would be discontinued on September 1, 2019, if not continued in statute.

DIGEST:

CSHB 1442 would continue the Office of Consumer Credit Commissioner (OCCC) until September 1, 2031.

The bill would update a range of OCCC's licensing and enforcement practices, including:

- authorizing OCCC to provide licenses with a term of up to two years instead of annually;
- creating a new voluntary pawnbroker employee licensing program;
- granting OCCC enforcement authority over crafted precious metal dealers consistent with its authority over other licensees and registrants;
- allowing OCCC to deny renewal applications when applicants do not comply with OCCC disciplinary orders; and
- updating enforcement provisions according to due process provisions of the Administrative Procedure Act.

License terms. The bill would authorize OCCC to set a licensing term for each of its licenses of up to two years.

The Texas Finance Commission would be required to set a licensing or registration period for each of its regulated industries of no more than two years and would be required to comply with the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008. If a license or registration had a period other than one year, the commissioner would be required to prorate the applicable fee.

To renew their license, license holders would be required to pay their license fee at least 30 days before their current license expired.

Voluntary pawnshop employee license program. A pawnbroker would

be allowed but not required to opt in to the pawnshop employee license program. A pawnbroker would opt in to the program by notifying the commissioner in writing on a form submitted at the time of the pawnbroker's original license application, at the time of a renewal of the pawnbroker's license, or at another time prescribed by the commissioner. A pawnbroker could opt out of the program by providing written notice during any period that the pawnbroker was permitted to opt in.

The bill would establish deadlines for new employees at a pawnshop participating in the employee license program regarding initial licensing, renewal, and the effect of delinquency notices from the commissioner.

The Finance Commission of Texas would be required to adopt rules no later than November 1, 2019, to administer the pawnshop employee license program. The term of a pawnshop employee license could not exceed two years and would be required to comply with the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008. If a license or registration had a period other than one year, the commissioner would be required to prorate the applicable fee.

OCCC would have to be prepared to accept applications for licenses under the pawnshop employee license program by December 1, 2019. OCCC would set a fee that was reasonable and necessary for carrying out the commissioner's powers and duties for voluntary pawnshop employee licenses.

Licensed pawnbrokers, whether or not they had opted in to the employee licensing program, would be responsible for all acts of their officers, directors, employees, and agents.

Administrative procedure. The commissioner would be authorized to refuse to renew the license or registration of a person who failed to comply with an OCCC enforcement order. Before it suspended or revoked a license, OCCC would provide notice and opportunity for a hearing. Tax refund anticipation loan facilitators would be entitled to a hearing before the commissioner or a hearings officer regarding revocation of their registration only if the facilitator made a written request for a hearing within 20 days of receiving notice of the proposed revocation of

registration.

Failure to make a timely written request for a hearing after receiving a determination and recommended penalty would be sufficient for the commissioner to approve the determination and impose the recommended penalty. The bill would remove the Finance Commission as an avenue for appeal of cease-and-desist orders and denials of debt cancellation agreement forms.

The bill would authorize OCCC to open an investigation upon reasonable cause to believe a violation had occurred, rather than having to wait for a response from the entity under investigation.

The bill would remove the requirement that OCCC prove injury to a consumer before the agency orders restitution.

The bill would allow confidential information or materials obtained for registration or licensing to be used to provide a summary of investigation information to the person who filed the complaint.

Crafted precious metal dealers. The bill would give OCCC standard enforcement authority over crafted precious metal dealers. OCCC would be authorized to order the crafted precious metal dealers to pay restitution to consumers when a regulatory violation has occurred.

The bill would revise the current reporting requirements on crafted precious metal dealers to allow them to submit a list that is filed with the dealer by each person intending to sell or exchange the metal so long as the list contains the information required in the report to the commissioner.

Annual report. The bill would streamline the scope of the annual report the OCCC is required to provide to the Legislature. OCCC still would be required to establish a program to address alternatives to high-cost lending in this state. It no longer would be required to:

- study and report on financial services offered to agricultural businesses and small businesses;

- develop models to provide lower-cost alternatives to assist borrowers who contract for high-cost loans; or
- track and map the location of lenders who enter into certain loan contracts.

Job posting. The intra-agency career ladder program would require intra-agency posting of all non-entry-level positions concurrently with any public posting, instead of the current requirement of at least 10 days before public posting.

Advisory committee authority. The bill would authorize the commissioner to appoint advisory committees to assist OCCC. The commissioner would be required to specify each committee's purpose, powers, and duties and would have to require each committee to report to the commissioner or office in a manner to be specified by the commissioner concerning the committee's activities and the results of its work.

Standard recommendations. The bill would make standard Sunset changes to complaint processes and require OCCC to make available its complaint investigation and resolution procedure. OCCC and the Finance Commission would be required to develop a policy for negotiated rulemaking and alternative dispute resolution. The requirement for a pawnshop license applicant or pawnshop employee license applicant to "be of good moral character" to be eligible for a license would be removed.

Effective date. This bill would take effect September 1, 2019. Any currently issued pawnshop employee licenses would expire on December 31, 2019. The changes in law made by this bill would not affect the validity of a disciplinary action or other proceeding that was initiated before the effective date and that is pending before a court or other government entity on the effective date.

The repeal of the criminal penalty for pawnshop employees working without a license would apply only to an offense committed on or after the effective date.

SUPPORTERS SAY:

CSHB 1442 would continue the already well functioning OCCC and update its licensing, enforcement, and other administrative procedures where appropriate in order to strengthen the commissioner's ability to protect consumers and foster a fair credit environment.

License terms. Allowing OCCC to extend licensing terms would improve efficiencies in workload management and ease the regulatory administrative burden on licensees and registrants. This would provide the office with more flexibility without compromising oversight of the industry.

Voluntary pawnshop employee licensure program. Concerns about the filed version of CSHB 1442's provision to end the OCCC's mandatory pawnshop employee licensure program were addressed in the committee substitute, which would make the program voluntary, striking a balance between administrative efficiency and consumer protection. Licensing serves the industry by cleaning up fraudulent activity, and having a single licensure program for the entire state would prevent a burdensome patchwork of local regulations from emerging.

State background checks are performed on an ongoing basis and are more extensive than background searches provided by private companies. State licensing also carries the advantages of increased consumer trust and allows for employees to transfer stores without needing to perform a new background check within a single licensing period.

Administrative procedure. Providing an opportunity to hold a hearing for those who failed to comply with an OCCC enforcement order, rather than having a requirement to hold a hearing, would align OCCC's statute with provisions in the Administrative Procedures Act, ensuring due process for licensees without wasting agency resources.

Giving OCCC authority to open an investigation upon reasonable cause to believe a violation had occurred would remove an obstacle to timely resolution for both complainants and respondents.

Authorizing the commissioner to refuse to renew the license of a person who failed to comply with an OCCC enforcement order after notice and

opportunity for a hearing would give the agency a standard tool to better enforce compliance with the Finance Code.

The bill would remove the unnecessarily high standard that OCCC prove injury to a consumer before the agency orders restitution. This would strike a better balance between due process for licensees and OCCC's mission of making consumers whole when adversely affected by violations.

Allowing the agency to give complainants high-level information about the outcome of their complaint investigation would increase transparency of the complaint process.

Crafted precious metal dealers. The bill would align OCCC's standard enforcement authority over crafted precious metal dealers with its authority to take action against all other unlicensed or unlawful activity related to industries under its jurisdiction, including authority to order crafted precious metal dealers to pay restitution to consumers when a regulatory violation has occurred.

Advisory committee authority. Given the diverse group of stakeholders impacted by OCCC’s regulatory scope, the agency’s work would benefit from statutory authority to formally establish advisory committees in rule as needed.

Standard recommendations. Changes to complaint processes would remove outdated complaint requirements from statute to ensure OCCC had the flexibility to adopt updated rules and procedures to timely and transparently resolve complaints.

Knowing and willful requirement. It is appropriate to retain the mens rea requirement that a person's violations be "knowing and willful" in order to be held liable. This is an appropriate check on OCCC's enforcement power. The "knowing and willful" requirement also would bring these financial services companies into regulatory parity with financial intermediaries.

OPPONENTS

The provision requiring OCCC to prove an entity's "knowing and willful"

SAY: state of mind before taking regulatory action is outdated and overly restrictive. Removing the "knowing and willful" requirement would align OCCC's authority with standard practice and remove unnecessary barriers limiting the agency's ability to take enforcement action.

SUBJECT: Continuing the State Board of Public Accountancy

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 10 ayes — T. King, Goldman, Geren, Harless, Hernandez, Herrero, K. King, Kuempel, Paddie, S. Thompson

0 nays

1 absent — Guillen

WITNESSES: For — John Sharbaugh, Texas Society of Certified Public Accountants

Against — (*Registered, but did not testify*: Vance Ginn, Texas Public Policy Foundation)

On — (*Registered, but did not testify*: Alan Leonard, Sunset Advisory Commission; William Treacy, Texas State Board of Public Accountancy)

BACKGROUND: The State Board of Public Accountancy was created by the 34th Legislature in 1915. The board is responsible for licensing and regulating accountants and accountancy firms.

Functions. The board verifies the eligibility of prospective certified public accountants (CPAs) to take the national CPA exam, licenses individuals who have passed the CPA exam and who meet all requirements in state law, and licenses firms that provide certain accounting services according to nationally recognized standards. The board also investigates and resolves complaints, which includes taking disciplinary action when necessary to enforce the Public Accountancy Act and board rules.

Governing Structure. The State Board of Public Accountancy is governed by 15 members appointed by the governor to six-year terms. Ten of these members are Texas-licensed CPAs, at least eight of whom must be sole proprietors or employed in a licensing firm, and the other

five members represent the public.

Funding. The board has been a self-directed semi-independent (SDSI) agency since 2001 and operates on fees collected from prospective CPAs, licensed CPAs, and firms. In fiscal 2017, the board collected almost $7.6 million from fees and penalties and spent about $6.1 million. The board also transferred $703,000 to general revenue as required under the SDSI Act and remitted $577,000 in administrative penalties and late fees.

The board maintains a fund balance for contingencies. At the end of fiscal 2017, this fund balance was $3.9 million.

Staffing. The board had 39 staff as of the end of fiscal 2017. As an SDSI agency, the board is not subject to employee caps or salary schedules under the General Appropriations Act.

The State Board of Public Accountancy would be discontinued on September 1, 2019, if not continued in statute.

DIGEST:

CSHB 1520 would continue the State Board of Public Accountancy until September 1, 2031.

Outside counsel. The bill would require the board to obtain the attorney general's approval before entering into any contract with outside legal counsel, including representation before the State Office of Administrative Hearings (SOAH).

Background checks. The board would be required to conduct a fingerprint-based criminal history record information check of applicants for a CPA exam or license and non-licensed firm owners based on information from the Department of Public Safety (DPS) and the Federal Bureau of Investigation. This requirement would replace previous language requiring applicants and non-licensed firm owners be of "good moral character."

An individual would be required to submit fingerprints to the board or DPS for the purpose of acquiring criminal history record information if the individual previously had not done so and was:

- an applicant for the uniform CPA exam;
- an applicant for a certificate or license;
- an applicant for the renewal of a license, unless the individual was not practicing public accountancy because of retirement or permanent disability; or
- a non-licensed owner or prospective owner of a CPA firm, upon the board's request.

An individual who was previously exempted from this requirement would be required to provide fingerprints for a criminal history check if the individual no longer qualified for the exemption.

An individual who failed to submit fingerprints would be prohibited from taking the uniform CPA exam or being issued a certificate or license. The board also could suspend or refuse to renew the license of an individual who did not comply with this requirement.

The board would be allowed to enter into an agreement with DPS to conduct the criminal history record information check of such individuals and could authorize DPS to collect a fee from each individual for the costs that DPS incurred in conducting the check.

Firm license. CSHB 1520 would require an office established or maintained in the state by a firm or a foreign person registered with the board to designate a resident manager licensed by the board, who would be responsible for the license of the firm or person.

Education and continuing education requirements for non-licensed owners of a CPA firm would be eliminated from the requirements for a firm license, and firm licenses no longer would be required to be renewed annually.

Out-of-state firms. The bill would expand the services that a firm licensed by another state that did not have an office in Texas could provide without obtaining a firm license to include:

- financial statement audits or engagements to be performed according to the Statements on Auditing Standards;
- examinations of prospective financial information or other engagements to be performed according to the Statements on Standards for Attestation Engagements; and
- engagements to be performed according to the auditing standards of the Public Company Accounting Oversight Board or its successors.

Such services would be required to be provided by an individual licensed by the board or practicing under a privilege.

Injunction. CSHB 1520 would authorize the attorney general, at the request of the board, to petition a district court for an injunction to prohibit a person from continuing to violate the Public Accountancy Act. Venue for a suit for injunctive relief would be in Travis County.

Public comment. The bill would require that the agenda of each regular meeting of the board include an opportunity for public comment on each agenda item or issue before the board made a decision on the item or issue. A person who wished to make a public comment at a meeting could not be required to notify the board in advance. The board could prohibit public comment at a meeting on an active investigation or enforcement proceeding.

Standard recommendations. CSHB 1520 also would apply several standard Sunset recommendations to the board, including updating provisions on board member training and on the board's complaints system.

Effective date. The bill's updated board member training requirements would apply to any member of the board appointed before, on, or after the effective date. Any member of the board who completed board member training before this date would be required to complete additional training by December 1, 2019.

Each applicant for renewal of a license first would be required to submit fingerprints to the board or DPS by September 1, 2021.

The board would be required to adopt or amend any rules necessary as soon as possible after the effective date of the bill.

The bill would take effect on September 1, 2019, and would apply to any contract with outside legal counsel entered into, complaint filed, and application submitted to the board on or after this date.

SUPPORTERS SAY:

CSHB 1520 would ensure that the State Board of Public Accountancy continued to regulate public accounting effectively and would improve the board's oversight, transparency, and ability to enforce the Public Accountancy Act. The bill also would ease administrative burdens on both the board and CPA firms.

Continued regulation. The State Board of Public Accountancy was created to protect the public by licensing and regulating professionals and firms who perform accounting work, and its continued existence and fulfillment of this mission is necessary. Accountancy is a technical profession that requires specialized education and adherence to precise standards. The improper practice of accountancy could lead to fraud or theft, which could harm the financial well-being of Texas residents and businesses. Continuing the board would help prevent this.

Oversight. CSHB 1520 would establish a level of oversight for the board's outside legal contracting that would be similar to that of other agencies. The approval of the attorney general already is required for most contracts that agencies enter into for outside legal counsel, excluding representation before State Office of Administrative Hearings (SOAH).

Over the past several years, the board of accountancy has hired outside counsel for representation before SOAH more frequently than have other agencies. Requiring the approval of the attorney general for the use of all outside counsel would allow the attorney general to monitor more closely controversies involving the board to ensure that the interests of the state were being represented effectively. The current attorney general approval process also would ensure that the board's contracting for attorneys followed best practices, including needs analysis and requests for qualifications.

Enforcement. The bill would ensure that all licensed CPAs had gone through a fingerprint-based background check by requiring current CPAs who had not previously undergone a background check to submit fingerprints for such a check, as well as by requiring all new applicants to submit fingerprints. This would ensure that the board could effectively and equally monitor all CPAs for criminal conduct and take any appropriate disciplinary action to protect the public. New licensees already go through fingerprint-based criminal background checks, but older licensees may not have.

Eliminating language requiring that CPA license applicants and non-CPA owners be of "good moral character" would free the board from an unclear, subjective standard that is difficult to enforce. This standard would be replaced by the fingerprint-based criminal record check, which would be more enforceable and would better protect the public.

The bill also would clarify the mechanisms for the board to seek an injunction to prevent violations of the Public Accountancy Act. This would ensure that the board had the necessary authority to take enforcement action in the same manner as other regulatory agencies.

Administration. The bill would ease administrative burdens on both the accountancy board and CPA firms. Removing the annual license renewal requirement would reduce the time the board spent processing renewals as well as the burden on licensees without sacrificing oversight. Eliminating unnecessary education and continuing education requirements for non-licensed owners of a firm likewise would remove unnecessary barriers to entry to firm ownership without decreasing public protection.

Firm mobility. The bill's expansion of the services that out-of-state CPA firms could provide in the state would align Texas more closely with national standards and reduce administrative burdens on firms, providing the public with more choice. Such firms would still be subject to the rules of the board.

Increased business mobility and continuing technological development allows CPAs to assist clients anywhere and at any time. Since 2007, Texas

has allowed out-of-state CPA firms to practice in Texas without a firm license as long as they do not establish an office in the state or provide financial statement audits or other attest services for a client in Texas. Over the past 12 years, several other state legislatures have passed similar statutes that are broader and do not exclude audit or attest services. The American Institute of Certified Public Accountants and the National Association of State Boards of Accountancy also promote this broader standard.

CSHB 1520 would bring Texas in line with what is becoming the accepted standard on the services that may be provided by out-of-state CPA firms. By reducing administrative burdens on CPA firms, the bill would enhance cross-border practice, providing the public with more choice in obtaining services from CPA firms, while still offering sufficient protection for the public.

OPPONENTS SAY:

CSHB 1520 would perpetuate an unnecessary barrier to entry for those wishing to practice accountancy in the state by continuing the Texas State Board of Public Accountancy, which should be allowed to expire. CPA licensing requirements set and enforced by the board exclude those who are not licensed from the market, increasing wages for those who are licensed and making accountancy services more costly for the public. It is not clear that the benefits of CPA licensing requirements, oversight, and enforcement outweigh the costs of this barrier to entry.

OTHER OPPONENTS SAY:

CSHB 1520 could result in increased costs and delays to the board by requiring the board to obtain the attorney general's approval before hiring outside attorneys, and this provision is not needed in the bill. Extending fingerprint-based background checks also could be intrusive.

SUBJECT: Coordinating corresponding transfer and production groundwater permits

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 11 ayes — Larson, Metcalf, Dominguez, Farrar, Harris, T. King, Lang, Nevárez, Oliverson, Price, Ramos

0 nays

WITNESSES: For — Steve Kosub, San Antonio Water System; Stacey Steinbach, Texas Water Conservation Association; (*Registered, but did not testify*: Jeff Heckler, Alliance Regional Water Authority; Heather Harward, Brazos Valley GCD; Jeff Coyle, City of San Antonio; Dirk Aaron, Clearwater UWCD; Tom Oney, LCRA; Shauna Fitzsimmons Sledge, Prairielands Groundwater Conservation District, Upper Trinity Groundwater Conservation District; Martin Gutierrez, San Antonio Chamber of Commerce; Brian Mast, San Antonio River Authority; Billy Phenix, Schertz Seguin Local Government Corporation, Cibolo Valley Local Government Corporation; Jess Heck, SouthWest Water Company; Peyton Schumann, Texas and Southwestern Cattle Raisers Association; Mia Hutchens, Texas Association of Business; Dean Robbins, Texas Water Conservation Association)

Against — Judith McGeary, Farm and Ranch Freedom Alliance; James Lee Murphy and Ellen Berky, League of Independent Voters; Stan Mitchell, SAMBA; Michele Gangnes, Simsboro Aquifer Water Defense Fund; (*Registered, but did not testify*: Philip Cook, Environmental Stewardship; Linda Curtis, League of Independent Voters; Travis Brown, Neighbors for Neighbors Citizens Group Lee County; Todd Heeg, Our Revolution San Antonio; Christopher Mullins, Save Our Springs Alliance; Esther Martinez, SAWS; Jimmy Gaines, Texas Landowners Council; and 10 individuals)

On — Ken Kramer, Sierra Club-Lone Star Chapter; Leah Martinsson, Texas Alliance of Groundwater Districts; (*Registered, but did not testify*: Charles Flatten, Hill Country Alliance; John Dupnik, Texas Water Development Board)

BACKGROUND:

Water Code sec. 36.122 requires that the permit period for water transfer rights out of a groundwater conservation district (GCD) be at least 30 years if construction for transporting the water has started before the issuance of the permit. The GCD may review the amount of water that may be transferred under the permit no more frequently than the period provided for the review or renewal of regular permits issued by the district. It may limit that amount if warranted after considering:

- the availability of water in the district and in the proposed receiving area;
- the projected effects of the proposed transfer on the aquifer and on existing permit holders; and
- the regional water plan and district management plan.

Sec. 36.1145 requires a GCD to renew operating permits without a hearing if the permit holder does not request any alteration to the permit that would require an amendment under district rules. This requirement does not apply if the permit holder is delinquent in paying fees, is subject to a pending action on whether the applicant violated the provisions of the permit, or has failed to comply with an order finding it in violation of a district permit.

DIGEST:

CSHB 1066 would require a groundwater conservation district (GCD) to extend the term of a groundwater transfer permit on or before its expiration to at least the length of the corresponding groundwater production permit from which the water was being transferred. Future renewals of groundwater production permits would renew corresponding transfer permits. These permits would be subject to the same conditions to which they were subject before their extension.

A GCD could grant or deny an application to extend a term only using rules that were in effect at the time the application was submitted, and the application would be governed by district rules consistent with the bill.

The bill would take effect September 1, 2019, and would apply only to transfer permits that expired after the effective date of the bill.

SUPPORTERS SAY:

CSHB 1066 would increase the stability and efficiency of the groundwater permitting process by coordinating the terms of transfer permits with the

terms of production permits.

Water utilities often need to invest hundreds of millions of dollars and plan decades in advance to secure long-term, reliable access to water for their customers. Current law partly reflects this by guaranteeing a transfer permit for 30 years if infrastructure investments are already being made.

However, local groundwater conservation district (GCD) production permits can be as short as one to five years, leading to permit holders being caught in a situation where they have made significant investments to provide water but lack the authorization to produce water they are already permitted to transfer.

Limiting when permits may be extended is counterproductive and unnecessary. Current law already protects the ability of a GCD to periodically review permits for negative impacts to aquifers and other permit holders and to limit water production where appropriate.

Only when no amendment to the permit was necessary would public meetings would not be required. If the GCD required an amendment to the permit, the expedited procedure would no longer apply. Limiting the permit extension or grandfathering in existing permits would be impractical for long-term, expensive utility projects.

OPPONENTS SAY:

CSHB 1066 could deprive local districts and the public of discretion and of input into the permitting process by allowing for the automatic approval of many permits without a public hearing. The bill should include provisions for public participation to address any community concerns.

Under the bill, permits also could be extended for decades before they expired. This could have unforeseen consequences for the life of an aquifer, permitting future pumping of water that the aquifer might be unable to sustain. For this reason, the bill should limit extensions to a more reasonable time frame such as six months before expiration.

Another solution would be to grandfather in existing permits. Current permits from GCDs were granted without accounting for the decades of

extension and subsequent impact on the sustainable use of the aquifer. This would return local authority to GCDs and give them the discretion to make the best decision for their communities.

SUBJECT: Automatic university admissions of valedictorians regardless of class size

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 10 ayes — C. Turner, Stucky, Button, Frullo, Howard, E. Johnson, Pacheco, Schaefer, Smithee, Walle

0 nays

1 absent — Wilson

WITNESSES: For — Jeff Harvey, Fayetteville ISD

Against — None

BACKGROUND: Under Education Code sec. 51.803, recent Texas high school graduates qualify for automatic admission to public undergraduate institutions in the state if they graduated with a grade point average in the top 10 percent of their class and meet certain other standards of achievement, including a statutory minimum score on the SAT or ACT assessment. The University of Texas at Austin is required to fill only 75 percent of its openings with applicants qualifying for automatic admission.

DIGEST: CSHB 539 would require public institutions of higher education in the state to admit any applicant for undergraduate admission who had graduated from high school as a class valedictorian within the past two years, provided that the student met all other statutory requirements for automatic admission. In the case of the University of Texas at Austin, valedictorians would count toward the university's 75 percent minimum threshold of automatically admitted students.

The bill also would make class valedictorians eligible for an existing state scholarship intended for outstanding high school students who ranked in the top 10 percent of their graduating class, subject to available funding.

It would apply beginning with admissions and scholarships awarded for the 2019-2020 academic year.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUPPORTERS SAY:

CSHB 539 would ensure that the top-performing student of each high school graduating class in the state was eligible for automatic admission to public universities regardless of the student's class size. Under the current "Top 10 Percent Rule," a valedictorian can be excluded from automatic admission because the student's graduating class has fewer than 10 students, making it mathematically impossible for the student to reach the 10 percent threshold. No valedictorian should be excluded from a state university because of the size of the graduating class, which is outside of a student's control. The bill still would require valedictorians to meet the same admissions standards as other students admitted automatically.

OPPONENTS SAY:

No concerns identified.

SUBJECT: Increasing the penalty for assault of a federal law enforcement officer

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Collier, Zedler, K. Bell, J. González, Hunter, P. King, Moody, Murr, Pacheco

0 nays

WITNESSES: For — Chris Cabrera, National Border Patrol Council; Monique Grame, U.S. Border Patrol; (*Registered, but did not testify*: Chris Jones, Combined Law Enforcement Associations of Texas (CLEAT); Scott Leeton, Corpus Christi Police Officers Association, CLEAT; David Sinclair, Game Warden Peace Officers Association; Jose Carlos Gonzalez, Gonzalez & Associates Homeland Security; Jessica Anderson, Houston Police Department; Jimmy Rodriguez, San Antonio Police Officers Association; AJ Louderback, Sheriffs' Association of Texas; Noel Johnson, TMPA; Micah Harmon)

Against — Michael Cargill, Texans for Accountable Government; (*Registered, but did not testify*: Jose Ramon, Cannabis Open Carry Walks; Cosom; Anthony Sieli; Kory Watkins)

BACKGROUND: Penal Code sec. 22.01 establishes the offense of assault, and sec. 22.02 establishes aggravated assault. Assault involving bodily injury is punished as a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) except under certain circumstances in which it is a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000). These circumstances include when the offense is committed against a public servant, security officer, or emergency services personnel. Assault is punished as a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000) if it is committed against a peace officer.

Aggravated assault involves serious bodily injury or a deadly weapon and is punished as a second-degree felony except under certain circumstances when it is a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to $10,000). Circumstances that result in

the higher penalty include when the crime is committed against a public servant or a security officer.

DIGEST:

HB 27 would increase penalties for assault and aggravated assault when committed against federal law enforcement officers. For assault, the penalty would be increased from a class A misdemeanor to a third-degree felony, and for aggravated assault, the penalty would be increased from a second-degree felony to a first-degree felony. The person committing assault or aggravated assault would have to know that the victim was a federal law enforcement officer. The officer would have to have been lawfully discharging an official duty or the assault would have to have been in retaliation or on an account of an exercise of official power or official duty.

Persons would be presumed to have known that someone was a federal law enforcement officer if the officer was wearing an official uniform or badge.

A federal law enforcement officer would be defined as any officer, agent, or employee of the United States authorized by federal law or by a federal agency to supervise, prevent, detect, or investigate violations of federal criminal law.

HB 27 would take effect September 1, 2019, and would apply to offenses committed on or after that date.

SUPPORTERS SAY:

HB 27 would bring penalties for assaulting federal law enforcement officers in line with those for assaulting public servants. Under state law, the penalties for assault and aggravated assault against public servants, peace officers, emergency services personnel, and security officers are increased from the base penalty. However, federal law enforcement officers, such as those working for the U.S. Customs and Border Protection, Federal Bureau of Prisons, and the Drug Enforcement Administration, are not included in these groups. Federal law enforcement officers routinely place themselves at risk for the public and can be targeted because of their status. They should be afforded the same protections as other public servants. HB 27 is a logical extension of current law that already imposes stiffer penalties when officers are

assaulted and would send a message of support to federal law enforcement officers.

Safeguards in current law would ensure the enhanced penalties applied only when appropriate. For example, federal officers would have to be acting lawfully or the assault would have to be committed in retaliation for or on account of an official duty, and the assault would have to meet the definition of an offense under Texas law.

While these assaults could be handled by federal prosecutors, workloads or other reasons can prevent this from occurring. HB 27 would establish another option in these cases. Texas law enforcement officers and prosecutors would retain their discretion on how to handle cases.

OPPONENTS SAY:

All assault victims should be given equal protection when subject to equal harm, and the state should not expand the use of enhanced punishments based on a victim's inclusion in a group. Assault and aggravated assault already are adequately punished based on the type of injuries, and federal law enforcement officers should not be given special protections.

SUBJECT: Repealing prohibition on designating certain land for agricultural use

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 9 ayes — Burrows, Bohac, Cole, Martinez Fischer, Murphy, Noble, Sanford, Shaheen, Wray

0 nays

2 absent — Guillen, E. Rodriguez

WITNESSES: For — John Fleming, Texas Mortgage Bankers Association; Marvin Jolly, Texas Realtors; (*Registered, but did not testify*: David Glenn, Home Builders Association of Greater Austin; Stephen Scurlock, Independent Bankers Association of Texas; Jeremy Fuchs, Texas and Southwestern Cattle Raisers Association; Scott Norman, Texas Association of Builders; Ray Head, Texas Association of Property Tax Professionals; Celeste Embrey, Texas Bankers Association; Jeff Huffman, Texas Credit Union Association; Michael Pacheco, Texas Farm Bureau; Daniel Gonzalez, Julia Parenteau, and Burt Solomons, Texas Realtors)

Against — None

BACKGROUND: Tax Code sec. 23.42(a-1) prohibits an individual from having land designated for agricultural use if that land secures a home equity loan.

In 2017, Texas voters approved Proposition 2 (SJR 60 by Hancock) amending the Texas Constitution to revise home equity loan provisions, including authorizing home equity loans for homesteads designated for agricultural use.

DIGEST: HB 1254 would repeal the statutory prohibition on an individual having land designated for agricultural use if that land secured a home equity loan.

The bill would take effect January 1, 2020.

SUPPORTERS SAY:

HB 1254 would revise the Tax Code to conform with the Texas Constitution, which was amended in 2017 to allow home equity loans on homesteads designated for agricultural use. Currently, there is a conflicting statutory provision prohibiting a person from designating land for agricultural use if that land secures a home equity loan. This has created uncertainty in the home equity lending market for lenders and property owners. The bill simply would remove a provision that was overlooked in order to ensure the Tax Code harmonizes with the Constitution and to allow more property owners to access home equity loans.

OPPONENTS SAY:

No concerns identified.

SUBJECT: Requiring building names and street addresses on polling location notices

COMMITTEE: Elections — favorable, without amendment

VOTE: 9 ayes — Klick, Cortez, Bucy, Burrows, Cain, Fierro, Israel, Middleton, Swanson

0 nays

WITNESSES: For — Glen Maxey, Texas Democratic Party; (*Registered, but did not testify*: Heather Hawthorne, Joyce Hudman, and Jennifer Lindenzweig, County and District Clerks' Association of Texas; Daniel Greer, Direct Action Texas; Alan Vera, Harris County Republican Party Ballot Security Committee; Cinde Weatherby, League of Women Voters of Texas; Lon Burnam, Public Citizen; Chris Davis, Texas Association of Elections Administrators; Windy Johnson, Texas Conference of Urban Counties; Aryn James, Travis County Commissioners Court; Idona Griffith; Russell Hayter; Paul Hodson; Brandon Moore)

Against — None

On — Christina Adkins, Secretary of State

BACKGROUND: Election Code sec. 4.003(b) requires election authorities to post notices of general and special elections in certain public places. The notices must include the locations of polling places.

Sec. 4.004 requires that such notices also must include the nature and date of the election, the hours that the polls will be open, and any other information required by law.

DIGEST: HB 1241 would require that notices of polling place locations include the building name of the polling place, if any, and its street address.

The bill would take effect September 1, 2019.

SUPPORTERS SAY: HB 1241 would ensure that voters could easily access polling locations

and eliminate confusion resulting from vague or incomplete election notices. The bill could especially benefit young or inexperienced voters and those who were unfamiliar with an area.

By requiring the street address of a polling location, the bill also would ensure that a voter could find a polling location even when a GPS device or online map service did not provide the correct address.

OPPONENTS SAY:

No concerns identified.